IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6178 of 1990

For Approval and Signature:

HON'BLE MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIVISIONAL CONTROLLER

Versus

KANTIBHAI JETHABHAI PARMAR

Appearance:

1. Special Civil Application No. 6178 of 1990

MR PRANAV G DESAI for the Petitioner

MR BG JANI for the Respondent

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 15/10/2004

ORAL JUDGEMENT

The petitioner - Gujarat State Road Transport

Corporation (hereinafter referred to as "the Corporation") challenges the judgment and award dated 20th October, 1989 passed by the Presiding Officer, Labour Court, Surat (hereinafter referred to as "the Labour Court") in Reference (LCS) No.436/1988. By impugned award the Labour Court has set aside the order of dismissal from service made against the respondent (hereinafter referred to as "the workman") and has imposed penalty of withholding of one increment without future effect. The Labour Court has also directed the Corporation to reinstate the workman in service with the benefit of continuity in service and other benefits except the backwages.

The workman was employed by the Corporation as Bus-Conductor. On 17th February, 1987 the workman was on duty on Ahmedabad-Rajpipla route. At the time of checking ten passengers were issued tickets in the denomination of Rs.5=00 which were used earlier. In other words, the workman had reissued the tickets worth Rs.50=00 which were used earlier. For the said act of misconduct, a disciplinary proceeding was held against the workman. The charge-sheet was issued against the workman on 5th March, 1987. After holding due enquiry the Inquiry Officer opined that the imputation of charge made against the workman was proved. Pursuant to the said finding of guilt a punishment of dismissal from service was imposed upon the workman. Feeling aggrieved, the workman raised industrial dispute that came to be referred to the Labour Court and was registered as above. Before the Labour Court, the petitioner gave purshis Ex.8 foregoing the challenge to the disciplinary proceeding but confined the challenge to the finding of guilt and the order of punishment.

According to the workman the tickets in denomination of Rs.5=00 each in question had not been used in the previous trip but as the said tickets were not in the bunch he entered the same in the way-bill. But, on counting there was a deficit in the cash collected by the workman. The workman, therefore, made search for the said tickets and found them lying loose in the bus. The workman collected the said tickets from the bus floor and used it in the return trip. He, however, did not correct the entries made in the way-bill through oversight.

The claim made by the workman was contested by the Corporation. According to the Corporation, the workman had reissued the used tickets and had thus committed a grave misconduct of misappropriation of the

Corporation's funds. The disciplinary proceeding was held against the workman in consonance with the principles of natural justice and the relevant regulations. The order of dismissal from service was, therefore, fully justified.

The Labour Court took note of the fact that the tickets in question were not produced before the Labour Court; that the guilt could not have been proved against the workman on the basis of the entries made in the way-bill alone and that the finding of guilt was recorded on the basis of suspicion. The Labour Court also took note of the past conduct of the workman. It is recorded that the incidence in question was the first incidence of its kind. In the circumstances, the Labour Court held that the workman was negligent in making entries in the way-bill. The Labour Court, therefore, set aside the order of dismissal from service and, in exercise of power conferred by Section 11-A of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"), imposed penalty of withholding of one increment without future effect.

Learned advocate Mr.Desai has appeared for the Corporation. He has submitted that the Labour Court has manifestly erred in interfering with the finding of guilt recorded by the disciplinary authority. He has submitted that the Labour Court does not have jurisdiction to sit in appeal over the administrative decision of the Corporation and to interfere with the finding of guilt recorded in the disciplinary authority. He has also submitted that the Labour Court has transgressed its jurisdiction conferred by Section 11-A of the Act. The Labour Court has transgressed its jurisdiction in exonerating the workman from the charge levelled against him. Mr.Desai has relied upon the judgment of the Hon'ble Supreme Court in the matter of Regional Manager, RSRTC v/s. Ghanshyam Sharma [(2002)10 SCC 330].

Learned advocate Mr.Jani has appeared for the workman and has contested the petition. He has submitted that though stringent standard of proof required in a criminal case is not required in a domestic enquiry, it is necessary that the finding of guilt is recorded on the basis of the evidence available. Such finding cannot be recorded on a mere suspicion or surmises. A mere suspicion cannot replace the proof. Mr.Jani has further submitted that pending this petition the workman has been reinstated in service. He, therefore, be permitted to continue in service. If need be, the punishment imposed upon the workman be enhanced. Mr.Jani has relied upon

the judgment in the matter of Gujarat State Road Transport Corporation v/s. U.A.Malek [2001-I-LLJ 180].

Learned advocate Mr.Desai has produced copy of the report of the Inquiry Officer for perusal. He has also produced the tickets in question which he admits that the learned advocate did not produce before the Labour Court. On perusal of the Inquiry Officer's report, it is evident that the Inquiry Officer had relied on the materials on record and had also considered the defence put-forth by the workman. The defence that the tickets in question had fallen off and were found lying on the bus floor was not accepted by the Inquiry Officer. It was observed that the tickets were bound and pinned in a bunch. It was not possible that the tickets had come off the bunch. Mr.Desai has also produced an updated default card. The said default card indicates that even after his reinstatement in service pursuant to the order of the Labour Court, the workman had committed acts of misconduct on several occasions. On 14 occasions, for the acts of misconduct proved against the workman, the workman was visited with punishment ranging from a fine of few rupees to withholding of increment/s with future effect and of reduction in pay to lower stage. On several occasions the workman was found to have allowed free travel to the passengers or had collected fare from the passengers without issuing tickets to them. Thus, the petitioner has repeatedly indulged into misconduct amounting to financial irregularities and misappropriation of the Corporation's funds.

In the matter of Regional Manager, RSRTC (supra), the Hon'ble Supreme Court has held that, "...where the bus conductors carry passengers without ticket or issue tickets at a less rate than the proper rate, the said acts would inter alia amount to either being a case of dishonesty or of gross negligence and such conductors were not fit to be retained in service because such inaction or action on the part of the conductors results in financial loss to the Road Transport Corporation."

As to the jurisdiction conferred by Section 11-A of the Act, the Court has observed that, "...the discretion has to be used judiciously. When the main duty or function of the conductor is to issue tickets and collect fare and then deposit the same with the Road Transport Corporation and when a conductor fails to do so, then it will be misplaced sympathy to order his reinstatement instead of dismissal."

In the matter of Gujarat State Road Transport

Corporation (supra), the workman, a bus conductor in the Corporation, was dismissed from service on the charge of misappropriation of money. The Labour Court directed the Corporation to provide employment to the workman afresh. As pending the petition before this Court the workman had reached the age of superannuation, the Supreme Court refused to interfere.

I am of the opinion that the Labour Court has manifestly erred in re-appreciating the evidence before the disciplinary authority and in recording a finding of its own. It is not within the jurisdiction of the Labour Court to hold whether a particular piece of evidence or defence of the workman should have been accepted or not by the disciplinary authority. As the disciplinary authority had recorded a definite finding that the workman had reissued the used tickets worth Rs.50=00, the Labour Court could not have recorded a contrary finding to hold that the finding of guilt recorded by the disciplinary authority was based on suspicion. The disciplinary authority, having recorded finding of guilt, in such case of misappropriation of the Corporation's funds, the only appropriate punishment should be dismissal from service. Absence of past incidence also cannot save such workman from penal consequences. As in the present case, pending the petition, pursuant to the order of the Labour Court the workman has been reinstated in service; ordinarily this Court would not interfere after several years. However, in the present case, as recorded hereinabove, even after the reinstatement in service and pending this petition the workman has resorted to similar acts of misconduct. As it is, the workman deserved dismissal from service. Considering his subsequent conduct he appears to have been emboldened in committing similar acts of misconduct repeatedly. The workman does not deserve any sympathy.

In above view of the matter, the petition is allowed. The judgment and award dated 20th October, 1989 passed by the Presiding Officer, Labour Court, Surat in Reference (LCS) No.436/1988 is quashed and set aside. The challenge to the order of punishment dated 12th July, 1988 is rejected. Rule is made absolute with cost.

(Ms. R.M.Doshit, J.)

/sakkaf